

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TACITA FAIR,)	
)	
Plaintiff,)	
v.)	Cause No. 4:17-cv-02391
)	
COMMUNICATIONS UNLIMITED, INC.,)	
<i>et al.</i> ,)	
)	
Defendants.)	

**MEMORANDUM OF LAW IN SUPPORT OF
COMMUNICATIONS UNLIMITED ALABAMA, INC.'S
MOTION TO DISMISS PLAINTIFF TACITA FAIR'S COMPLAINT, OR IN THE
ALTERNATIVE, TO STAY AND COMPEL ARBITRATION**

COMES NOW Communications Unlimited Alabama, Inc., and for its Memorandum of Law in Support of its Motion to Dismiss Plaintiff Tacita Fair's Complaint, and states:

Introduction

On September 11, 2016, Plaintiff Tacita Fair filed her Complaint. *See* Doc. #: 1. Plaintiff purports to state causes of action under the Fair Labor Standards Act ("FLSA") and the Missouri Minimum Wage Law ("MMLW") on behalf of herself and others similarly situated. Communications Unlimited, Inc. ("CUA") raised in its Answer the affirmative defense that Plaintiff's claim and causes of action were barred by an agreement to arbitrate. *See* Doc. #: 19 at p. 14. Plaintiff Tacita Fair's claims and causes of action in this Court are barred by an enforceable arbitration agreement executed by Plaintiff Tacita Fair in March of 2016.

Plaintiff's Arbitration Agreement

In March of 2016, Plaintiff Tacita Fair executed an arbitration agreement. A true and accurate copy of it is attached to the Motion and to this Memorandum as Exhibit 1 (an

authenticating affidavit is also attached to the exhibit). In it, Tacita Fair agreed to arbitrate “all claims or controversies” with CUA, “whether or not arising out of or related to my relationship with” CUA. *See* Exhibit 1 a p. 1 (of the agreement). The agreement sets forth a non-exclusive list of the types of dispute that are subject to arbitration. That list included claims for “wages, salary, benefits, or other compensation due, claims for violations of the [FLSA] or any state law relating to the payment of wages and/or hours” *Id.* at p. 2.

Plaintiff Tacita Fair also agreed that “arbitration pursuant to the Agreement will not be conducted as a class action, [or] collective action” *Id.* at p. 3.

Argument

This issue is controlled by the Supreme Court’s recent decision in *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018). Congress instructed the Courts to “enforce arbitration agreements according to their terms—including terms providing for individualized proceedings.” *Id.* at 1619, 1632. The Supreme Court found arbitration agreements like the one here to be enforceable.

At least one of the cases at issue in *Epic Systems Corp., Ernst & Young LLP v. Morris*, pertained to claims by Morris that Ernst & Young violated the FLSA. *Id.* at 1620. Although Morris’s arbitration agreement called for individualized proceedings, Morris sought to litigate, as Tacita Fair does here, on behalf “of a nationwide class under the FLSA’s collective action provision,” and to pursue a state wage claim on behalf of a class under F.R.Civ.P. 23. *Id.*

The Supreme Court found that neither the Federal Arbitration Act’s “savings clause,” *id.* at 1621-23, nor the National Labor Relations Act, *id.* at 1624-30, was inconsistent with the mandates of the Federal Arbitration Act, and the arbitration agreements should be enforced as written. *Id.* at 1632.

Plaintiff Tacita Fair's arbitration agreement, Exhibit 1, must be enforced as written. *Id.*
at 1632. She has agreed to one-on-one arbitration of her wage claims against CUA.

WHEREFORE, Communications Unlimited Alabama, Inc. prays this Court for an Order dismissing with prejudice Plaintiff Tacita Fair's Complaint, for its costs incurred herein, and for whatever other relief this Court deems just and proper. In the alternative, Communications Unlimited Alabama, Inc. prays this Court for an Order staying Tactia Fair's claims and causes of action against Communications Unlimited, Inc. so that she may initiate arbitration proceedings, and for any other relief this Court deems just and proper.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the forgoing was served on all parties of record this 21th day of June 2018 by operation of this Court's Electronic Filing System.

/s/ Fredrick J. Ludwig